IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3663 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

KANTILAL JADAVJI WADHER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3663 of 1986

MRS KETTY A MEHTA for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 07/01/2002

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution, the petitioner, by now a retired Executive Engineer, has prayed for a deemed date of promotion to

the post of Executive Engineer, which date, according to the petitioner, should be 23.12.1977. The petitioner was the senior-most scheduled caste person who could have been promoted on the roster point as prescribed by Government Circular dated 31.1.1976, according to the petition. It was, however, conceded that the Scheduled Caste and Scheduled Tribe Amendment Act, 1976 having come into force with effect from 27.7.1977, the benefit of the petitioner's caste being included in the Schedule could have been granted only after the amendment had come into force. The petitioner still relied upon GAD Circular No.BAC/1566/CH dated 31.1.1976 and the subsequent Circular dated 27.7.1976 to argue that no sooner the petitioner's caste was included in the list of scheduled caste, he ought to have been promoted on the basis of his being the senior-most Deputy Executive Engineer at the relevant time. It was further submitted that at the very latest when a Deputy Executive Engineer junior to the petitioner was promoted on 21.6.1979, the petitioner ought to have been promoted from that date and on that basis a deemed date could be granted now, which would allow further promotions to the petitioner in the higher cadre. Thus, in short, the petitioner has mainly relied upon his status as the senior-most Deputy Engineer having the special status of a scheduled caste officer and prayed that he may be declared to have been entitled to promotion as soon as the aforesaid Act came into operation.

2. The facts which ought to have been revealed in the petition and which have come on record through the affidavit-in-reply of the Under Secretary of the Government of Gujarat, Narmada Water Resources and Water Supply Department, on behalf of the respondent, are relevant and very important. It is averred for the respondent that the select list of Deputy Executive Engineers fit for promotion to the post of Executive Engineer (Civil) for the relevant period was prepared on 30.6.1977 when the aforesaid Act had not come into operation. The roster system became applicable from 27.7.1977 at the earliest. The petitioner's name was considered by the select committee at its meeting on 30.6.1978 and it was found that a departmental enquiry was pending against him. Therefore, the committee recommended that his case may be considered after the departmental proceedings were finalised. The Gujarat Public Service Commission to whom the proposal was sent also agreed. Thereafter, the committee met on 18.4.1980 and recommended the petitioner's name for inclusion in the select list of Deputy Executive Engineers who were found fit for promotion and, by that time, the enquiry

against him was also over. Thus, the real reason for late promotion of the petitioner was the pendency of the departmental proceedings and even the earlier inclusion of his name on the basis of his being a member of the scheduled caste could not have entitled him to promotion from the earlier date as prayed in the petition.

3. The learned counsel Mrs.Mehta sought to undermine the stand of the respondent with the plea that the Department could have resorted to the "sealed cover procedure" during the pendency of the departmental enquiry. However, it was fairly conceded that the aforesaid important factual aspect was never revealed in the petition nor was the promotion at a later date challenged on the ground that the "sealed cover procedure" was not followed. In these facts and circumstances, the petitioner is not entitled to the relief for a direction to the respondent to give to the petitioner any deemed date of promotion. Accordingly, the petition is dismissed and Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)